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Supreme Court, U.S.
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OFFICE OF THE CLERK

No. _____

In the

SUPREME COURT OF THE UNITED STATES

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John L. Corrigan,

Petitioner

v.

Myron Kline, et al.

Respondent,

----------•----------

On Petition For Writ of Certiorari to the United States Court of Appeals For the Ninth Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the U.S. Claims Court violates due process protections when it dismisses on summary judgment without first allowing discovery – under the circumstances at bar.

LIST OF PARTIES

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OPINIONS BELOW

The opinions of the United States District Court, and the United States Court of Appeals for the Ninth Circuit are unreported.

JURISDICTION

The judgment of the United States District Court, Western District of Washington at Seattle on July 18, 2006. (App. 1). The reconsideration of the judgment of the United States District Court, Western District of Washington at Seattle on August 1, 2006. (App. 6) The judgment of the United States Court of Appeals for the Ninth Circuit affirming on May 23, 2007. (App. 8)

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

The "due process clause" of the 5th Amendment to the U.S. Constitution. FRCP Part V. Dispositions and Discovery – Rules 26-37

STATEMENT OF THE CASE

Corrigan alleges that his federal civil rights were violated when defendant, Federal Way police officer Myron Kline, unlawfully detained him during a traffic stop, and added a citation for speeding to two other citations for failure to carry registration and loud exhaust pipes.

Corrigan alleges that he was initially cited for failure to have a registration and for loud exhaust pipes. He then alleges that the police officer did not like his responses to "additional mundane questions" and added a citation for speeding.

Corrigan challenged his citations in Federal Way Municipal Court and was found guilty of all three charges.

Corrigan now asserts federal and state law claims against the officer that issued the citations, Myron Kline, Chief of Police Anne Kirkpatrick, and the City of Federal Way.

QUESTION PRESENTED

Whether the U. S. Claims Court violates due process protections when it dismisses on summary judgment without first allowing discovery – under the circumstances at bar.

ARGUMENT

> The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. This requirement of neutrality in adjudicative proceedings safeguards the two central concerns of procedural due process, the prevention of unjustified or mistaken deprivations and the promotion of participation and dialogue by affected individuals in the decision making process. . . . by ensuring that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him.
>
> . . . Indeed, "justice must satisfy the appearance of justice," . . . [Citations omitted] [Emphasis added]

Marshall v. Jerrico, Inc., 100 S.Ct. 1610, 1613, (1980)

Corrigan did not receive a "fair and impartial trial" because the District Court stayed discovery – committing prejudicial error and in this case – plain error.

> **Plain error rule.** . . . Doctrine which encompasses those errors which are obvious and highly prejudicial, which affect the substantial rights of the accused, and which, if uncorrected, would be an affront to the integrity and reputation of judicial proceedings. [Citations omitted]

Black's Law Dictionary, 6th Edition, © 1990 West Publishing Co.

Corrigan could not fairly present his case because the District Court denied Corrigan's request for discovery.

> Matters relating to discovery rest in the discretion of the trial court, and such discretion is inherent and broad. However, the court's discretion is not unlimited, unbridled, or unfettered; and where discovery is sought as to a nonprivileged matter which is directly relevant to the issues before the court, there is no room for the exercise of discretion. The trial court abuses its discretion in discovery when it reaches a decision that is so arbitrary and unreasonable that it results in a clear and prejudical error of law. Likewise, a trial court abuses its discretion in matters of

> discovery if its actions substantially tip the balance in an effort to avoid prejudice and delay and thus unreasonably deny a party his day in court. [Citations omitted]

27 C.J.S. § 4 page 11.

Consider the following:

Discovery Was Overdue and Promised By Defendant.

Corrigan submitted a first request for Interrogatories to Defendant Myron Kline and a First Request for Production of Documents to Defendant City of Federal Way on January 3, 2006. Later, defendant requested an extension because he was still gathering information and was very close to having all the information for Corrigan. Corrigan granted the extension.

However, prior to submitting the promised discovery, defendant motioned the court for a stay of discovery pending ruling on qualified immunity noted on motion calendar May 12, 2006. The court granted the stay and later granted the summary judgment.

There were no claims that Corrigan was abusing the discovery process and as such the requested discovery should have been produced. There was no prejudice on the defendant to produce

the discovery – because the defendant claimed to have it almost ready.[1]

Corrigan should not be prejudiced because defendant is trying to circumvent the rules of discovery.

> It may very well be that timely answers to the interrogatories and production of the accident reports would have made no difference. This is not for us to decide. It is precisely because we cannot know what impact full compliance would have had that we must grant a new trial. . . .
>
> > . . . But, as said by the Supreme Court, a litigant who has engaged in misconduct is not entitled to "the benefit of calculation, which can be little better than speculation, as to the extent of the wrong inflicted upon his opponent.
>
> . . . Far from insuring that a wrongdoer not profit from his wrong, minimal terms would simply encourage litigants to embrace tactics of evasion and delay. This we cannot do. [Citations omitted]

Gammon v. Clark Equipment Co., 686 P2d 1102, 1107 (Wash.App. 1984)

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[1] Defendant was certainly given enough time to provide it and/or object to it if it was burdensome or submitted for an improper purpose.

The purpose of a stay is to protect the defendant from expenses associated in gathering discovery when it may not be necessary as a point of law. However, that does work here because the defendant had already incurred the expense of gathering the discovery. Defendant just never took the final step in handing it over to Corrigan.

This is plan error because the stay totally benefited the defendant, and totally prejudiced Corrigan. The defendant is benefiting for his wrongdoing – and totally prejudicing Corrigan in the process – this is proscribed by the U.S. Supreme Court. See Gammon.

Corrigan Is Entitled To Discovery

> To the degree that a defendant asserts that previously established legal doctrine did not clearly proscribe his or her conduct, the threshold question is: What occurred. In many cases there is a sharp dispute over the facts. And, since the *Harlow-Anderson* rule does not purport to change the way in which factual issues are litigated, only where there is no dispute as to the underlying conduct (or where the plaintiff's version would justify an immunity finding) can the court properly dispense with discovery. [Citations omitted]

Police and Misconduct Law and Litigation 3rd, © 2004 West.

Corrigan alleges that defendant Kline:

- lied at the trial about the circumstances of the citation;
- that he did not and could not pace Corrigan for the speeding violation;
- added speeding to the ticket after already writing up the citation for the other two infractions; and
- caused Corrigan to be unlawfully detained because defendant enlarged the time it normally takes to write a citation because of all the abuses that Corrigan was subjected to.

Defendant Kline, therefore, was not entitled to qualified immunity. So, there is a great deal of dispute over the underlying conduct of the traffic citation, and plaintiff's version would not justify an immunity finding – therefore, the court cannot properly dispense with discovery on the qualified immunity claim.

Further, the idea that Corrigan is not allowed discovery for other summary judgment issues is grossly contradictory to the liberal discovery rules.

Improper Order To Stay Discovery

The district court granted a stay of discovery while defendant presented a motion for qualified immunity. (App. 10)[2] However, defendant did not present a motion for qualified immunity. Defendant submitted a motion for summary judgment listing four issues for the court to consider – only one of which was qualified immunity. This was grossly improper and very prejudicial to Corrigan - one the court was aware of.

> Plaintiff misunderstands the nature of the instant motion. Defendants have sought summary judgment on several grounds, including their entitlement to qualified immunity. This is the exact motion that defendants proposed when this Court previously stayed discovery. *(See* Dkts. #11 and #17). Thus, the instant motion is not improper as plaintiff asserts.

App. 4. This was NOT the exact motion that defendants proposed. The stay was based on qualified immunity – not other summary judgment issues. The court expanded the parameters of the stay while at the same time denying Corrigan an opportunity to oppose the stay relating to those other issues. This is very prejudicial and a denial of due process.

Now, instead of trying to defend against a motion for qualified immunity without discovery,

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[2] Defendants' motion for the stay is exclusively related to the question of qualified immunity.

Corrigan has to face both a motion for qualified immunity and a motion for summary judgment on other matters – both without the benefit of "liberal discovery rules."

> The Supreme Court has noted that the aim of the liberal federal discovery rules is to "make a trial less a game of blindman's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent. The availability of liberal discovery means that civil trials
>
> > No longer need be carried on in the dark. The way is now clear . . . for the parties to obtain the fullest possible knowledge of the issues and facts before trial. [Citations omitted]

Gammon, at 1106. Corrigan cannot be expected to respond to summary judgment without the opportunity to avail himself of the "liberal" discovery rules. Especially, when the defendant (and, respectfully, with the court's concurrence) is abusing the discovery process.

REASON FOR GRANTING CERT

The reason for granting cert in this case is not because of any major conflicts with other circuits. Corrigan asks that the court be "motivated by a feeling that the decision represents a gross miscarriage of justice or a subtle erosion of a statutory or legal principle, or that the result reached below is unduly harsh in its impact."[3]

It may not seem that a traffic ticket should create such a condition. However, there is something untoward going on in the State of Washington about "due process" in the process of settling traffic issues. While the Washington claims that they have a system of due process – they really do not.

In the case at bar, defendant Kline lied in court about the circumstances of the speeding violation. The record shows that - given the time it took defendant Kline to catch up to Corrigan, pace him for a quarter of a mile (through traffic), then stop Corrigan – the distance Corrigan was stopped would have been much farther then the record shows (including defendant Kline's testimony) it actually was. Also, the ticket shows that the speeding violation was the last thing on the ticket (when the ticket itself has a place for speeding which is the "first" violation section of the citation) which also puts into question the credibility of defendant

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[3] Supreme Court Practice, 7th Edition, © 1993 by The Bureau of National Affairs, Inc., Washington, D.C.

Kline's statement. Discovery of these issues and more (especially defendant Kline's potential bias against Harley-Davidson riders) was sought through discovery – which was denied by the court – even though it was already assembled by defendant.

Finally, there is something strange about all this.[4] It seems bizarre that the court would take this position on discovery especially at a time when the first request for discovery was already completed by the defendant. Yet, it is very easy to see why defendant would seek not to provide discovery – the major inference being that the discovery would significantly harm defendant's position.

Given the liberal discovery rules, the obvious attempt at circumvention of the discovery rules by defendant, the prejudice to Corrigan in trying to respond to qualified immunity claims and summary judgment claims on other issues without discovery, it seems very strange indeed. Call it paranoid, but this seems to go deeper than the case at bar.[5]

This certainly falls under a miscarriage of justice or erosion of a statutory or legal principle.

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[4] Not the least of which is the 9th COA response about admonition that Corrigan did not prove his case for "additional discovery." Corrigan needs first to establish a case for "any discovery" before he can request "additional discovery."

[5] Corrigan wonders if there is something else going on at the US District Court. While this case seems bizarre in its unique approach to discovery, another US District Court case is even more bizarre in its approach to Rule 11 violations – see US COA-9th No. 06-35998. Corrigan wonders if, perhaps, the protections of due process do not apply to him.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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August 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN L. CORRIGAN, Plaintiff,	)	
v.	)	**CASE NO. CV5-1728RSM**
MYRON KLINE, *et.al.* Defendants.	)	

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

This matter comes before the Court on defendants' Motion for Summary Judgment. (Dkt. #18). Defendants argue that plaintiff has failed to support his allegations that any constitutional violations have occurred, plaintiff has failed to support his state law claims, and, even if such claims were supported, defendants are protected by qualified immunity. Plaintiff, appearing *pro se,* responds by arguing that this Court should not have stayed discovery,[6] and that the stay of discovery has prejudiced his case. (Dkt. #23). For the reasons set forth below, the Court agrees with defendants and hereby GRANTS their motion for summary judgment.

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[6] This Court previously stayed discovery while defendants brought the instant motion for summary judgment based on qualified immunity. *(See* Dkt. #17).

II. DISCUSSION.

A. Background

In this lawsuit, plaintiff claims that his federal civil rights were violated when defendant, a City of Federal Way police officer, unlawfully detained him during a traffic stop, and added a citation for speeding to two other citations for failure to carry registration and loud exhaust pipes. Plaintiff also appears to make state law claims of false imprisonment, outrage, malicious prosecution and negligent infliction of emotional distress.

This action arises from a traffic stop and subsequent arrest of plaintiff Davis on the morning of October 12, 2004, in Federal Way, Washington. According to the Complaint, plaintiff was driving his Harley Davidson motorcycle east on 320th Street South, when he was stopped for speeding. Plaintiff asserts that he was initially cited for failure to have a registration and for loud exhaust pipes. He then alleges that the police officer did not like his responses to "additional mundane questions" and added a citation for speeding.

Defendants acknowledge that Officer Kline cited plaintiff for speeding, loud exhaust pipes, and failure to carry registration. Officer Kline did not place plaintiff under arrest and plaintiff left the scene after he was cited.

Plaintiff challenged his citations in Federal Way Municipal Court and was found guilty of all three charges. Plaintiff states that he is currently appealing that decision to the King County Superior Court.

Plaintiff now asserts federal and state law claims against the officer that issued the citations, Myron Kline, Chief of Police Anne Kirkpatrick, and the City of Federal Way.

B. Summary Judgment Standard

Summary judgment is proper where "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986). The Court must draw all reasonable inferences in favor of the non-moving party. *See F.D.I.C. v. O'Melveny & Meyers*, 969 F.2d 744, 747 (9th Cir. 1992), *rev'd on other grounds*, 512 U.S. 79 (1994). The moving party has the burden of demonstrating the absence of a genuine issue of material fact for trial. *See Anderson*, 477 U.S. at 257. Mere disagreement, or the bald assertion that a genuine issue of material fact exists, no longer precludes the use of summary judgment. *See California Architectural Bldg. Prods., Inc., v. Franciscan Ceramics, Inc.*, 818 F.2d 1466, 1468 (9th Cir. 1987).

Genuine factual issues are those for which the evidence is such that "a reasonable jury could return a verdict for the non-moving party." *Anderson*, 477 U.S. at 248. Material facts are those which might affect the outcome of the suit under governing law. *See id.* In ruling on summary judgment, a court does not weigh evidence to determine the truth of the matter, but "only determine[s] whether there is a genuine issue for trial." *Crane v. Conoco, Inc.*, 41 F.3d 547, 549 (9th Cir. 1994) (citing *O'Melveny & Meyers*, 969 F.2d at 747). Furthermore, conclusory or speculative testimony is insufficient to raise a genuine issue of fact to defeat summary judgment. *Anheuser-Busch, Inc. v. Natural Beverage Distributors*, 60 F. 3d 337, 345 (9th Cir. 1995). Similarly, hearsay evidence may not be considered in deciding whether material facts are at issue in summary judgment motions. *Blair Foods, Inc. v. Ranchers Cotton Oil*, 610 F. 2d 665, 667 (9th Cir. 1980).

C. Failure to Respond to Summary Judgment Arguments

Plaintiff completely fails to respond to any of defendants' substantive arguments. He does not dispute the legal standards set forth in defendant's motion, nor does he dispute any of the factual allegations set forth by defendants. Instead, plaintiff argues that "qualified immunity and summary judgment are two very different legal concepts. Discovery rules are different relating to each." (Dkt. #23 at 2). Plaintiff then asks this Court to stay this motion while he conducts discovery and/or seeks an interlocutory appeal relating to discovery.

Plaintiff misunderstands the nature of the instant motion. Defendants have sought summary judgment on several grounds, including their entitlement to qualified immunity. This is the exact motion that defendants proposed when this Court previously stayed discovery. *(See* Dkts. #11 and #17). Thus, the instant motion is not improper as plaintiff asserts.

Moreover, plaintiff's response appears to be an attempt to move this Court to reconsider its previous Order staying discovery. *(See* Dkts. #17 and #23). Notwithstanding the fact that plaintiff did not oppose a motion staying all discovery except that which was currently pending, plaintiff's attempt to move for reconsideration at this point is untimely. This Court's Local Rules require that a party move for reconsideration within ten judicial days of the date of the Order to which it relates. Local Rule CR 7(h)(2). The Order staying discovery was issued on May 16, 2006. (Dkt. #17). Plaintiff s response to the instant motion for summary judgment was filed June 2, 2006 — twelve judicial days after the Court's Order staying discovery. (Dkt. #23). Accordingly, the Court will not reconsider its previous Order.

Accordingly, this Court must also grant summary judgment in defendants' favor. This Court's Local Rules state that lig' a party fails to file papers in opposition to a

motion, such failure may be considered by the court as an admission that the motion has merit." Local Rule CR 7(b)(2). Having reviewed the record in this case, the Court finds no reason not to apply this rule. As noted above, plaintiff has failed to respond to the merits of defendants' arguments, and does not dispute the factual allegations asserted by defendants. Therefore, summary judgment is appropriate.

III. CONCLUSION

Having reviewed defendants' motion for summary judgment (Dkt. #18), plaintiffs opposition (Dkt. #23), defendants' reply (Dkt. #24), the declaration in support of defendants' briefs, and the remainder of the record, the Court hereby ORDERS:

(1) Defendants' motion for summary judgment (Dkt. #18) is GRANTED, and this case is DISMISSED.

(2) The Clerk shall forward a copy of this Order to all counsel of record.

DATED this _18_ day of July 2006.

RICARDO S. MARTINEZ
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN L. CORRIGAN, Plaintiff,	)	
v.	)	CASE NO. CV5-1728RSM
MYRON KLINE, *et.al.* Defendants.	)	

ORDER DENYING MOTION FOR RECONSIDERATION

This matter comes before the Court on plaintiff's Motion for Reconsideration. (Dkt. #27). Plaintiff asks this Court to reverse its previous Order granting defendants' motion for summary judgment, in which the Court determined that plaintiff failed to respond to any of defendants' substantive arguments, and untimely moved for reconsideration of the Court's prior Order staying discovery. (Dkt. #25).

Having reviewed plaintiff's instant motion for reconsideration (Dkt. #27), and the remainder of the record, this Court hereby finds and ORDERS:

(1) Plaintiffs Motion for Reconsideration (Dkt. #27) is DENIED. By local rule, motions for reconsideration are disfavored, and the Court will ordinarily deny such a motion in the absence of "a showing of new facts or legal authority which could not have been brought to its attention earlier with reasonable diligence." W.D. Wash. Local Rule CR 7(h). In his motion for reconsideration, plaintiff essentially reiterates the same argument pertaining to discovery that he previously presented to this Court. Plaintiff then suggests, for the first time, that he should have been allowed

additional time to respond to defendants' substantive arguments. Finally, plaintiff appears to reiterate the claims he raised in his Complaint. In making its previous decision, the Court fully considered plaintiff's arguments, and examined the factual record presented on defendants' motion for summary judgment. Plaintiff has presented no new facts or arguments that persuade the Court that it committed manifest error granting that motion. Accordingly, the Court declines to reconsider its previous Order.

(2) The Clerk shall forward a copy of this Order to plaintiff and all counsel of record. DATED this 1 day of August, 2006.

RICARDO S. MARTINEZ
UNITED STATES DISTRICT JUDGE

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

John L. Corrigan
Plaintiff-Appellant,

v.

MYRONE KLINE, Officer, City of Federal Way Police; et al.,
Defendants – Appellees.

No. 06-35738

D.C. No. CV-05-01728-RSM

MEMORANDUM*

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Ricardo S. Martinez, District Judge, Presiding

Submitted May 16, 2007+

Before: PREGERSON, REINHARDT, and TASHIMA, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

+ The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

John L. Corrigan appeals pro se from the district court's summary judgment in his 42 U.S.C. § 1983 action alleging that his civil rights were violated when he was cited for traffic offenses. We have jurisdiction under 28 U.S.C. § 1291. We review de novo a grant of summary judgment and may affirm on any basis supported in the record. *Enlow v. Salem-Keizer Yellow Cab Co., Inc.*, 389 F.3d 802, 811 (9th Cir. 2004). We affirm.

The district court did not err when it granted summary judgment because Corrigan failed to set forth specific facts showing that there is a genuine issue for trial, as required by Fed. R. Civ. P. 56(c). *See T W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass 'n,* 809 F.2d 626, 630 (9th Cir. 1987). To the extent Corrigan contends that the district court should have granted a continuance and permitted him to conduct discovery, the district court did not err because Corrigan did not "show that additional discovery would uncover specific facts which would preclude summary judgment." *Maljack Prods., Inc. v. Good Times Home Video Corp.*, 81 F.3d 881, 888 (9th Cir. 1996).

The district court did not abuse its discretion when it denied Corrigan's motion to reconsider because Corrigan did not present the district court with "newly discovered evidence" or show that the district court "committed clear error or [that] the initial decision was manifestly unjust." *School Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1258, 1263 (9th Cir. 1993).

AFFIRMED.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN L. CORRIGAN, Plaintiff,	)	
v.	)	NO. CV5-1728RSM
MYRON KLINE, *et.al.* Defendants.	)	

DEFENDANTS' MOTION TO STAY DISCOVERY PENDING RULING ON QUALIFIED IMMUNITY

[NOTE ON MOTION CALENDAR: May12, 2006]

I. RELIEF REQUESTED

Defendants City of Federal Way Police Officer Myron Kline, Chief of Police Anne E. Kirkpatrick, and the City of Federal Way seek an order staying discovery while defendants bring a motion for and obtain a ruling on whether they are entitled to qualified immunity.

II. STATEMENT OF FACTS

Plaintiff claims that the defendant police officers violated his rights during an discovery cut-off date of December 18, 2006. Trial in this matter is currently scheduled for April 16, 2007.

Defendants believe they are protected by qualified immunity and are in the process of preparing a motion which will present this matter for the court's consideration. Plaintiff, on the other hand, has stated his intent to proceed with

discovery, including requesting production of officer personnel files and other voluminous materials relating to the officer.

III. ISSUE PRESENTED

Whether discovery should be stayed pending determination of qualified immunity issues.

IV. LEGAL AUTHORITY AND ARGUMENT

Discovery should be stayed pending the determination of defendants' right to qualified immunity. In *Harlow v. Fitzgerald,* 457 U.S. 800, 818 (1982), the Supreme Court held that until the threshold issue of immunity is resolved, discovery should not proceed. *C.f. Anderson v. Creighton,* 483 U.S. 635, 646 n. 6 (1987) (denial of discovery is appropriate on qualified immunity issue where actions alleged by plaintiff are such that a reasonable officer could have believed they were lawful). In *Mitchell v. Forsyth,* 472 U.S. 511, 525 (1985), the Supreme Court again explained that "the essence" of immunity is the defendant's "entitlement not to have to answer for his conduct in a civil damages action." Such a defendant is entitled to a ruling on a motion to dismiss "based on official immunity before the commencement of discovery." *Id.* at 526 (recognizing that "[u]nless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery"). *See also DiMartini v. Ferrin,* 889 F.2d 922 (9th 1989). In furtherance of this policy, police officer defendants also have the right to immediately appeal a denial of qualified immunity. *See, e.g., Marks v. Clarke,* 102 F.3d 1012, 1017 n. 8 (9th Cir. 1997) (recognizing that in *Behrens v. Pelletier,* 516 U.S. 299 (1996), the Supreme Court "held that a defendant may appeal both the district court's denial of a motion to dismiss on the basis of qualified immunity and a

subsequent denial of summary judgment on the basis of such immunity"). *See also Moran v. State,* 147 F.3d 839 (9th Cir. 1998) (W.D. Washington stayed discovery pending defendant police officers' motion for summary judgment based on qualified immunity.)

Defendants should not be burdened with discovery until their rights to qualified immunity have been considered. The Court should stay discovery in accordance with the authorities cited above.

V. CONCLUSION

In order to allow the defendants Myron Kline and Anne Kirkpatrick the ability to invoke qualified immunity from suit, discovery should be stayed until the defendants' right to qualified immunity has been determined.

DATED this 24th day of April, 2006.

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